FILE COPY

OCT

CHARLES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 84

W. L. MATTHEWS, ET AL, Appellants,
VS.
J. F. RODGERS, ET AL, Appellees.

BRIEF FOR APPELLANTS.

GEO. T. MITCHELL,
Attorney General,

J. A. LAUDERDALE,
Assistant Attorney General,

Attorneys for Appellants.

INDEX

	Page
Statement of the Case	1
Points Relied on for Reversal of this Cause	3
Point I	3
Point II	4
Brief and Argument	4
Point I-A	4
Point I-B	8
Point I-C	13
Point I-D and E	18
Point II-A and B	21
Appendix	36

CASES RELIED ON BY APPELLANTS.

American Manufacturing Co. v. City of St. Louis, 250 U. S. 459, 63 L. Ed. 1084	24
Arbuckle v. Blackburn, 113 Fed. 616, 48 L. Ed. 535	19
Atchison, T. & S. F. Co. v. O'Connor, 223 U. S. 280	12
Atlantic Coast L. R. Co. v. Standard Oil Co., 72 L. Ed. 270	25
Berryman v. Board of Trustees, 223 U. S. 334	16
Boise Artesian Hot & Cold Water Co., Ltd. v. Boise City, 213 U. S. 276	5
Carson Petroleum Co. v. Vial, 279 U. S. 94, 73 L. Ed. 626	25
Cave v. Rudolph, 287 Fed. 989	8
Central Consumers Co. v. Austin, 238 Fed. 616	20
Citizens Bank of Louisiana v. Cannon, 164 U. S. 319	14
Coe v. Errol, 116 U. S. 517, 29 L. Ed. 715	22
Cole v. Norborne Land Drainage District, 207 U. S. 45	14
Coulson v. Harris, 43 Miss., 728	10

Crescent Cotton Oil Co. v. Mississippi. 257 U. S. 129, 66 L. Ed. 166 24

Dalton Adding Machine Co. v. State Corporation Commission, 236 U. S. 698 ..... 7, 19

Diamond Match Co. v. Village of Ontonagon, 188 U. S. 81 24

Fitts v. McGehee, 172 U. S. 516, 43 L. Ed. 535 19

Fishback v. Western Union Telegraph Co., 161 U. S. 96 13

Francis v. Flinn, 118 U. S. 385 ..... 6, 19

Gaar, Scott & Co. v. Shannon, 223 U. S. 468 11

General Oil Co. v. Crane, 52 L. Ed. 754 25

Harkrader v. Wadley, 43 L. Ed. 399 21

Hoffman Brewing Co. v. M'Elligott, 259 Fed. 525 20

Holt v. Indiana Manufacturing Co., 176 U. S. 68 14

Hope Natural Gas Co. v. Hall, 274 U. S. 284 28

Hunt v. New York Cotton Exchange, 205 U. S. 322 17

Lemke v. Farmers' Grain Co., 258 U. S. 50 32

Lion Bonding Co. v. Karatz, 262 U. S. 77 15

McCluskey v. Marysville, 61 L. Ed. 578 25

Merchants Exchange v. Missouri, 248 U. S. 365 28

Munn v. People of Illinois, 94 U. S. 77 31

Oliver Iron Mining Co. v. Lord, 262 U. S. 172 28

Packard v. Banton, 264 U. S. 140 16

Philadelphia and Reading Railroad Co. v. Commonwealth of Penn., 82 U. S. 164 29

Pickard v. Pullman So. Car Co. 117 U. S. 934 12

Poindexter v. Greenlaw, 114 U. S. 210, 29 L. Ed. 185 19

Scott v. Frazier, 253 U. S. 243 15
Swift & Co. v. United States, 111 U. S. 22 12

Turner v. Jackson Lumber Co., 159 Fed. Rep. 923 17
Turner v. Jackson Lumber Co., 218 U. S. 685 14
Tuttle v. Everett, 51 Miss., 27 9

Walter v. Northeastern R. R. Co., 147 U. S. 370 13

STATUTES CITED.

Article II, Constitution of the United States 18
Section 56, Chapter 88, Laws of Mississippi, 1930
2, 4, 13, 18, 21, 22, 36-39
Section 379, U. S. Code Ann., Sec. 265 J. C. Section 720, R. S. 19
Section 380, U. S. Code Ann., Section 266, J. S. 19
Sections 238 and 266 Judicial Code 1
Chapter 229, Sec. 1, Act of February 13, 1925 1

In The Supreme Court of The United States

OCTOBER TERM, 1931

NO. 84

W. L. MATTHEWS, ET AL, Appellants,
VS.
J. F. RODGERS, ET AL, Appellees.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

Appellees, J. F. Rodgers, and others, filed their bill in the District Court of the United States for the Northern District of Mississippi, attacking in so far as appellees' business is concerned, the constitutionality of Section 56, Chapter 88, Laws of Mississippi, 1930.

A three-judge court was organized as provided in Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1.

The bill sets out in detail appellee's method of doing business and also the method of marketing long staple cotton in the Mississippi Delta. (See Rec. pp. 4-10.)

The bill also alleged the usual judicial facts, that is, that unless an injunction issued a multiplicity of suits would

be brought against appellees. Second, that the amount involved exceeded $3,000.00. Third, that they had no adequate remedy at law. Fourth, that said Section 56, Chapter 88, Laws of 1930 was unconstitutional. However, there is no contention that said statute is unconstitutional, except when applied to persons engaged exclusively in interstate commerce. There is no contention that it is unconstitutional when applied to persons engaged in intrastate business.

A temporary restraining order was granted by Honorable E. R. Holmes, District Judge, on September 20th, 1930.

When the cause came on for hearing on motion for preliminary injunction, appellants here filed a motion to dismiss the bill. The grounds for said motion are set out in the record at page 19.

This motion was overruled, and temporary injunction granted. Appellants then filed an answer to the original bill. (See Rec. pp. 22-28.)

When the cause came on for hearing, counsel for both parties filed an agreed statement of fact. These facts appear in the record pages 28-43.

The court held that appellants were engaged in interstate business and that said statute was "inapplicable in so far as the same undertakes to levy a privilege tax on the plaintiffs herein whom the court finds to be engaged solely in interstate commerce, and further finds that to construe said statute as applying to an interstate business such as

the plaintiffs are engaged in would be in violation of the Constitution of the United States and a burden on interstate commerce." (Rec. p. 43.) The finding of fact by the court is in the record pages 44-50.

The agreed statement of facts and the facts found to be true by the court show that appellees were engaged in buying and selling cotton; that they were resident citizens of and doing business in Mississippi; that 90 per cent or more of the cotton bought by them was sold in interstate commerce; in other words, that 90 per cent or more of the cotton bought by them was sold to persons and corporations living outside the State of Mississippi; that 10 per cent or less of the cotton purchased by them was sold to persons residing in Mississippi. In other words, abo[redacted] per cent of the business was interstate commerce, and [redacted] per cent or less intrastate business.

POINTS RELIED ON FOR REVERSAL OF THIS CAUSE.

POINT I.

The court below was without jurisdiction for the following reasons, to-wit:

(a) Because there is no equity on the face of the bill.

(b) Because plaintiffs have a plain, adequate and speedy remedy at law.

(c) Because the amount in controversy is less than $3,000.00.

(d) Because Section 56, Chapter 88, Laws of 1930 does not contravene any provision in the Constitution of the United States.

(e) Because a Federal Court cannot enjoin a sovereign state or state officials from enforcing a state statute which does not violate the Federal Constitution.

POINT II.

The decree of the court below should be reversed for the following reasons:

(a) Because Section 56, Chapter 88, Laws of 1930 does not contravene any provision in the Constitution of the United States.

(b) Because under the facts found by the court in this case plaintiffs are not engaged exclusively in interstate commerce, and the tax would apply to the intrastate business.

BRIEF AND ARGUMENT

POINT I.

A.

The Court Was Without Jurisdiction Because There Is No Equity On the Face of the Bill.

The averment of the possibility of the multiplicity of

suits is not sufficient to invoke equity jurisdiction.

As a ground for equity jurisdiction, plaintiffs allege the possibility of the multiplicity of suits. This may be a remote possibility, but is not a probability. A great number of suits over the small amount involved in these various claims would be as burdensome and as unprofitable to the State as it would be to the plaintiffs. The fact is there could be no multiplicity of suits as to any one of the plaintiffs in this case. There could be only one civil suit for the collection of the tax, and one criminal case for failure to pay the tax. A large number of plaintiffs cannot pool their rights in order to make a multiplicity of suits.

Even then, there is no probability that all of the plaintiffs would be sued as the same facts and same principles of law would be involved in each and every one of them, and it would be worse than foolishness for the State to institute three or four hundred suits before the principles of law were settled.

In *Boise Artesian Hot & Cold Water Co., Ltd., vs Boise City*, 213 U. S. 276, the Supreme Court of the United States held as follows:

> "Nor do we think that there is any danger of a multiplicity of suits in the sense that would authorize the issuance of an injunction. One suit only has been brought, and that by direction of the city council. It remains pending, and when it reaches judgment it will determine finally every question in dispute between the parties. There is no need of any other suit except to prevent the

running of the statute of limitations, and nothing to indicate that any will be brought. Where the multiplicity of suits to be feared consists in repetitions of suits by the same person against the plaintiff for causes of action arising out of the same facts and legal principles, a court of equity ought not to interfere upon that ground unless it is clearly necessary to protect the plaintiff from continued and vexatious litigation. Something more is required than the beginning of a single action with an honest purpose to settle the rights of the parties. 1 Pom. Eq. Jur. 3rd. ed., Sec. 254."

In the case of *Francis vs. Flinn*, 118 U. S. 385, the Supreme Court held as follows:

"The whole gist of the complaint is that the defendants do not treat the plaintiff as having a right to use his vessel as a pilot boat, and have publicly so stated, and that some of the parties mentioned have been subjected to suits for their acts in piloting. But if this be so, the plaintiff has a full remedy for his alleged wrongs in the courts of law. They furnish no ground for the interposition of a court of equity. If the plaintiff has a right to pilot vessels with his boat through the pass and is wrongfully interfered with by the defendants or others, he can prosecute them for the wrong. If his vessel is arrested in its passage, without lawful warrant, he can bring the defendants before the courts to answer for their conduct. If his pilots are duly licensed, and they are hindered or prevented from the exercise of their business, both he and they have the same means of redress which are afforded to every citizen whose rights are invaded and obstructed. If the publications in the newspapers are false and in-

jurious, he can prosecute the publishers for libel. If a court of equity could interfere and use its remedy of injunction in such cases, it would draw to itself the greater part of the litigation properly belonging to courts of law.

"We think the court below should have sustained the demurrer of the defendants for want of equity in the bill."

In the case of *Dalton Adding Machine Co. vs. State Corporation Commission*, 236 U. S. 698, the Supreme Court stated the allegations of the complaint as follows:

"The appellant contends that its business in Virginia is wholly interstate. A statute of Virginia requires foreign corporations doing business there to obtain a license from the state corporation commission, to pay a fee, etc., and it is alleged that the commission threatens to take proceedings to enforce the statute and the penalties provided for disobeying it against the appellant, contrary to Article I, Section 8, of the Constitution. The appellant further alleges that it has reason to fear and fears a multiplicity of proceedings and the imposition of many fines, and that it will suffer irreparable loss from even a temporary interference with its affairs, through loss of sales and prestige, help to its competitors, and encouragement of similar proceedings in other states."

The Court held as follows:

"We agree with the district court in its conclusion and in its grounds. Like it, we leave on one side the merits of the appellant's claim of immunity, and confine ourselves to deciding that no reason is shown for anticipating the ordinary

course of the law. We also leave aside the question whether the action of the commission is or is not the action of a court protected from interference on the part of the courts of the United States. Rev. Stat., Sec. 720. *Brentis vs. Atlantic Coast Line Co.*, 211 U. S. 210, 226, 230, 53 L. Ed. 150, 158, 160, 29 Sup. Ct. Rep. 67. The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly. *First Nat. Bank vs. Allbright*, 208 U. S. 548, 553, 52 L. Ed. 614, 616, 23 Sup. Ct. Rep. 349. Especially is this true in the matter of collecting taxes and license fees. *Boise Artesian Hot & Cold Water Co. vs. Boise City*, 213 U. S. 276, 53 L. Ed. 796, 29 Sup. Ct. Rep. 426. The appellant has an adequate remedy at law in its right to raise the constitutional question if proceedings are taken against it, or, it seems, to recover the money if it pays under protest. No special circumstances are shown, that we can notice, to take this case out of the ordinary rule. *Indiana Mfg. Co. vs. Koene*, 188 U. S. 681, 690, 47 L. Ed. 651, 656, 23 Sup. Ct. Rep. 452."

In the case of *Cave vs. Rudolph*, 287 Fed. 989, the Federal Court held as follows:

> "Nor does the possibility of the multiplicity of arrests and trials in such cases pending a final decision of the question avail to bring the issue within the jurisdiction of equity."

POINT I.

B

The Court Was Without Jurisdiction Because

Plaintiffs Have a Plain, Adequate and Speedy Remedy at Law.

In addition to the statutory remedies provided for the recovery of taxes illegally collected when a tax collector collects an illegal tax, the tax payer has a right of action against the tax collector for the amount of taxes paid.

In the case at bar none of the taxes have been paid. The tax payer could pay the tax under protest and give notice to the tax collector that he would sue such tax collector for a refund of the money so paid, and in this way protect all of his rights.

In the case of *Tuttle v. Everett*, 51 Miss., page 27, the Supreme Court of Mississippi held as follows:

> "It is insisted on the part of the plaintiff in error that the taxes were voluntarily paid, and for that reason cannot be recovered back from the tax collector. This would be a correct legal proposition, where the property is properly taxable, and there was a mere irregularity in the levy or collection of the tax. But where the assessment and levy of the tax is illegal and void, the tax paid to the collector may be recovered back by the tax payer from the tax collector, whilst the same remains in his hands. This is in accordance with reason, principle and authority. Blackwell in his valuable work on Tax Titles says: 'Where a county or other local corporation levy a tax which is illegal, and the citizen pays the tax to one who has a formal authority to collect it, the payment is not voluntary but compulsive, and an action will lie against the collector to recover it back, unless he has paid

it over to his superiors, in which event the action must be brought against the corporation.' Blackwell, 187 top page, 4th. ed.

"The case of *Hawkins et al v. The Board of Supervisors of Carroll County*, 50 Miss., 755, shows that the assessment and levy of the tax was unauthorized by law, and was therefore null and void. If the assessment be made in violation of law, it is a void act, the collector, in enforcing its collection, is trespasser. Blackwell on Tax Titles, 156 star page. And this doctrine is maintained in the case of *Coulson v. Harris*, 43 Miss. 751.

"In the case under consideration the tax was illegally collected by the plaintiff in error, under color of authority from the defendant in error, the tax payer, who properly recovered a judgment for the same in the court below."

In the case of *Coulson v. Harris*, 43 Miss., 728, text 750 the Supreme Court of Mississippi held as follows:

"If the trustees had authority to levy the tax, they might, no doubt, rightfully collect it, and if they had no such authority, and should attempt to coerce the payment of the tax by distress, they would be guilty of a wrong, for which a court of law would afford an adequate remedy. It is true that a court of equity will sometimes interpose to prevent a wrong, but it is done in general only where the wrong is in its nature irreparable in the modes of redress afforded by courts of common law; and that cannot be said to be the case in relation to the supposed wrong which is apprehended by the complainants.' The trustees of *Louisville v. Gwathmey & Gretsinger*, 1 *A. K. Marshall*, 412.

"If the assessment of a tax be in violation of law, it is a void act; the collector, in enforcing its collection, is a tresspasser, and the purchaser acquires no title at the sale, and in general, the taxpayer has a plain, full, adequate and complete remedy at law. In the case of *Marr v. Enlow*, 1 Yerger 452, an action of trover was brought against the tax collector for personal property, which he had seized for the purpose of enforcing the collection of a tax which had been illegally assessed. The supreme court of Tennessee held that the action would lie. And the same doctrine was maintained in the case of the county court of *Obion v. Marr*, 8 Humphrey 634; Blackwell on Tax Titles, 156."

In *Gaar, Scott & Co. v. Shannon*, 223 U. S. 468, the Supreme Court of the United States held as follows:

"Neither a statute imposing a tax, nor the execution thereunder, nor a mere demand for payment, is treated as duress. It does not necessarily follow that there will be duress of goods. Or, if there is, the citizen to avoid the consequences of the duress, may pay the money, regain the use of his property, and maintain a suit for the recovery of what has been exacted from him. The legal remedy redresses the wrong. But he has the same right to sue if he pays under compulsion of a statute whose self-executing provisions amount to duress. An act which declares that where the franchise tax is not paid by a given date, a penalty of 25 per cent shall be incurred, the license of the company shall be cancelled, and the right to sue shall be lost, operates much more as duress than a levy on a limited amount of property. Payment to

avoid such consequences is not voluntary but compulsory, and may be recovered back.... *Swift & C. & B. Co. v. United States*, 111 U. S. 29, 28 L. Ed. 343, 4 Sup. Ct. Rep. 244; *Robertson v. Frank Bros. Co.* 132 U. S. 23, 33 L. Ed. 238, 10 Sup. Ct. Rep. 5; *Oceanic Steam Nav. Co. v. Stranahan*, 214 U. S. 329, 53 L. Ed. 1018, 29 Sup. Ct. Rep. 671; *Atchison, T. & S. F. R. Co. v. O'Connor*, decided this day. (223 U. S. 280, ante, 436, 32 Sup. Ct. Rep. 216.)"

In *Atchison, T. & S. F. Co. v. O'Connor*, 223 U. S. 280 the Supreme Court of the United States held as follows:

"The other question is whether the defendant is liable to the suit. The defendant collected the money, and it is alleged that he still has it. He was notified when he received it that the plaintiff disputed his right. If he had no right, as he had not, to collect the money, his doing so in the name of the state cannot protect him. *Erskine v. Van Arsdale*, 15 Wall. 75, 21 L. E. 63. See *Poindexter v. Greenhow*, 114 U. S. 270, 29 L. Ed. 185, 5 Sup. Ct. Rep. 903, 962. It is said that the money as soon as collected, belonged to the state. Very likely it would have but for the plaintiff's claim, assuming it to remain an identified trust fund; but the plaintiff's claim was paramount to that of the state, and even if the collector of the tax were authorized to appropriate the specific money and to make himself debtor for the amount, it would be inconceivable that the state should attempt to hold him after he had been required to repay the sum."

See also *Pickard v. Pullman So. Car Co.*, 117 U. S. 934;

Swift & Company v. United States, 111 U. S. 22.

POINT I.

C

The Court Was Without Jurisdiction Because The Amount In Controversy Is Less Than $3,000.00.

The tax levied by Section 56, Chapter 88, Laws of Mississippi, 1930 is $100.00. The appellants contend that the amount of the tax is the amount in controversy. Appellees contend that the right to carry on their business as cotton buyers and shippers is worth more than $3,000.00, and that the value of the right so to do is the amount in controversy. Appellants concede that if the courts hold that the value of the right of plaintiffs to do business is the amount in controversy, then this point cannot be sustained because appellants agree that the value of the right of plaintiffs to do business is more than $3,000.00 The appellants contend that the amount in controversy is the amount of tax which is $100.00 and is, therefore, not the judicial amount.

In *Fishback v. Western Union Telegraph Co.*, 161 U. S. 96, the telegraph company sought to enjoin the collection of certain taxes. It appears from the reported case that the taxes against the telegraph company were assessed in each county. The Court held that the telegraph company could not combine the taxes in the separate counties, and unless the tax in one county was more than the jurisdictional amount, then the suit must fail.

See also *Walter v. Northeastern R. R. Co.*, 147 U. S. 370.

In *Holt v. Indiana Manufacturing Co.*, 176 U. S. 68, it is held that a suit to restrain the collection of taxes not exceeding $2,000.00 in amount, though arising under the constitution or laws of the United States, is not within the jurisdiction of the Circuit Court of the United States.

This case further holds that future taxes which may be affected by the decision cannot be included in determining the value of the matter in dispute.

In *Citizens Bank of Louisiana v. Cannon*, 164 U. S. 319, the Court held that in a suit by a bank to enjoin the collection of taxes for certain years on property claimed to be exempt, the amount of the tax being insufficient to give jurisdiction, the fact that the value of the exemption during the continuance of the charter of the bank will exceed the jurisdictional amount, will not give jurisdiction.

In the case of *Cole v. Norborne Land Drainage District*, 207 U. S. 45, the Supreme Court held that in a suit to enjoin the collection of a tax for drainage benefit on the ground of the unconstitutionality of the statute that the assessments against each of them was more than the jurisdictional amount and the suit could not be sustained.

The tax for the current year and not for future years controls in a case to enjoin the collection of a tax.

See *Citizens Bank v. Cannon*, 164 U. S. 319.

In *Turner v. Jackson Lumber Company*, 218 U. S. 685, the Supreme Court held that the amount in controversy was

the amount of taxes in dispute, and that unless this was more than the jurisdictional amount, the Court would not have jurisdiction.

In *Lion Bonding Company v. Karatz*, 262 U. S. 77, the Supreme Court held that a plaintiff who sued on his own behalf and on behalf of other persons similarly situated, that the amount in controversy was the amount claimed by each plaintiff, and not the aggregate amount.

In *Scott v. Frazier*, 253 U. S. 243, the Supreme Court held:

> "There is no allegation that the loss or injury to any complainant amounts to the sum of $3,000.00. It is well settled that in such cases as this the amount in controversy must equal the jurisdictional sum as to each complainant. *Wheless v. St. Louis*, 180 U. S. 379; *Rogers v. Hennepin Co.*, 239 U. S. 62.
>
> "In cases where, although the entire matter in dispute in the suit exceeds in value the jurisdictional limit, nevertheless, if there are several and separate interests in that sum belonging to distinct parties and constituting distinct causes of action, although actually united in one suit and growing out of the same transaction, the jurisdiction of the court cannot be maintained where such separate interests are below the jurisdictional amount.
>
> *Ex parte Baltimore, etc. R. Co.*, 106 U. S. 5;
> *Adams v. Crittenden*, 106 U. S. 576;
> *Farmers Loan Co. v. Waterman*, 106 U. S. 265;
> *Schewd v. Smith*, 106 U. S. 188;
> *Elgin v. Marshall*, 106 U. S. 578;

Ogden v. Armstrong, 168 U. S. 224;
Chamberlain v. Browning, 177 U. S. 605."

In *Packard v. Banton*, 264 U. S. 140, text 142, the Supreme Court held as follows:

"Appellees insist that the district court was without jurisdiction because the matter in controversy does not exceed the value of $3,000.00. Judicial Code, Section 24, Subd. 1. The bill discloses that the enforcement of the statute, sought to be enjoined, will have the effect of materially increasing appellant's expenditures, as well as causing injury to him in other respects. The allegations, in general terms, are that the sum or value in controversy exceeds $3,000.00, which the affidavits filed in the lower court tend to support; that appellant is the owner of four motor vehicles, the income from which would be reduced, if the law be enforced, to the extent of $18.50 *each* per week; and that his business would otherwise suffer. The object of the suit is to enjoin the enforcement of the statute, and it is the value of this object thus sought to be gained that determines the amount in dispute. *Mississippi & M. R. Co. v.* Ward, 2 Black. 485; 17 L. Ed. 311; *Texas & P. R. Co. v. Kuteman*, 4 C. C. A. 503, 13 U. S. App. 99, 54 Fed. 547, 552; *Nashville C & St. L. R. Co. v. McConnell*, 82 Fed. 65, 73; *Scott v. Donald*, 165 U. S. 107, 114, 41 L. Ed. 648, 653, 17 Sup. Ct. Rep. 262; *Hutchinson v. Beckham*, 55 C. C. A. 333, 118 Fed. 399, 402; *Evenson v. Spaulding*, 9 L. R. A. (N. S.) 904, 82 C. C. A. 263, 150 Fed. 517, 520; *Hunt v. New York Cotton Exch.*, 205 U. S. 322, 336, 51 L. Ed. 821, 826, 27 Sup. Ct. Rep. 529."

In the case of *Berryman v. Board of Trustees*, 223 U. S.

334, Whitman College had a contract for a certain term of years exempting it from the payment of taxes. Afterwards the Legislature undertook to tax the property of the college. In that case the Court held that the amount of tax for one year would not control, but that the action of the Legislature in levying the tax breached the contract, and the value of the contract would control.

In the case of *Hunt v. New York Cotton Exchange*, 205 U. S. 322, the Court held that the value of the right to use the New York Cotton Exchange, and not the cost to the complainant, controlled.

I have been unable to find any case where a tax was involved that the Court did not hold that the amount of the tax in controversy was the amount to determine the jurisdiction of the Court.

In the case of *Turner v. Jackson Lumber Co.*, 159 Fed. Rep. 923, appeal dismissed in 218 U. S. 685, the plaintiff sought to enjoin the collection of certain taxes amounting to less than $2,000.00. During the pendency of the cause the land sought to be taxed sold for taxes. The Court held that the amount of the tax and not the value of the land was the amount in controversy.

In the case at bar there is only $100.00 in controversy, and as set out under the second division of this brief, the plaintiffs may pay $100.00 to the tax collector and file a suit to recover it, and if there are any constitutional rights involved, the same may be finally determined by the Supreme Court of the United States. The plaintiffs, there-

fore, have a complete and adequate remedy at law, and the amount involved is less than $3,000.00.

Plaintiffs allege that their income from their business is from $5,000.00 to $20,000.00 per annum. It certainly would not be incumbent upon them to sacrifice this business in order to escape the payment of a $100.00 tax, or in order to have the legality of the tax judicially determined.

POINT I.

D and E

The Court Was Without Jurisdiction Because Section 56, Chapter 88, Laws of 1930, Does Not Contravene Any Provision In the Constitution of the United States, and Because Injunction Will Not Lie Against A Sovereign State Or A State Official Enforcing A Valid Statute.

Complainants allege that the statute is unconstitutional, but this is based on the theory that complainants are doing an interstate business and the tax levied by said section would be a burden on and regulate interstate commerce. There is no contention that the statute would be unconstitutional when applied to a cotton buyer who did no interstate business.

Article 11 of the Constitution of the United States is as follows:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

"An injunction to restrain a state officer from enforcing a valid state statute is a suit against the state and cannot be maintained." *Poindexter v. Greenlaw*, 114 U. S. 210 29 L. Ed. 185; *Fitts v. McGehee*, 172 U. S. 516, 43 L. Ed. 535; *Arbuckle v. Blackburn*, 113 Fed. 616, 48 L. Ed. 239; Section 379, U. S. Code Ann., Section 265, J. C. Section 720, R. S.; Section 380, U. S. Code Ann., Sec. 266 J. S.; *Francis v. Flynn*, 118 U. S. 385, 30 L. Ed. 165; *Dalton Adding Machine Co. v. State Corporation Commission*, 236 U. S. 698, 59 L. Ed. 797.

In the latter case the Supreme Court of the United States held as follows:

"The appellant contends that its business in Virginia is wholly interstate. A statute of Virginia requires foreign corporations doing business there to obtain a license from the state corporation commission, to pay a fee, etc., and it is alleged that the commission threatens to take proceedings to enforce the statute and the penalties provided for disobeying it against the appellant, contrary to Article 1, Paragraph 8, of the Constitution. The appellant further alleges that it has reason to fear and fears a multiplicity of proceedings and the imposition of many fines, and that it will suffer irreparable loss from even a temporary interference with its affairs, through loss of sales and prestige, help to its competitors, and encouragement of similar proceedings in other states."

"We agree with the district court in its conclusion and in its grounds. Like it, we leave on one side the merits of the appellant's claim of immunity, and confine ourselves to deciding that no

reason is shown for anticipating the ordinary course of the law. We also leave aside the question whether the action of a court protected from interference on the part of the courts of the United States. Rev. Stat. Sec. 720. *Prentiss v. Atlantic Coast Line Co.* 211 U. S. 210, 226, 230, 53 L. Ed. 150, 158, 160, 20 Sup. Ct. Rep. 67. The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly. *First Nat. Bank v. Albright,* 208 U. S. 548, 553, 52 L. Ed. 614, 616, 28 Sup. Ct. Rep. 349. Especially is this true in the matter of collecting taxes and license fees. *Boise Artesian Hot & Cold Water Co. v. Boise City,* 213 U. S. 276, 53 L. Ed. 796, 29 Sup. Ct. Rep. 426. The appellant has an adequate remedy at law in its right to raise the constitutional question if proceedings are taken against it, or, it seems, to recover the money if it pays under protest. No special circumstances are shown, that we can notice, to take this case out of the ordinary rule. *Indiana Mfg. Co. v. Koehne,* 188 U. S. 681, 690, 47 L. Ed. 651, 656, 23 Sup. Ct. Rep. 452."

"The interpretation of valid criminal statutes of the state is a matter within the exclusive jurisdiction of the state courts, and the Federal courts follow the interpretation of the state courts of last resort in such matters."

Central Consumers Co. v. Austin, 238 Fed. 616.

In *Hoffman Brewing Company v. M'Elligott,* 259 Fed. 525, it was held that a Federal District Attorney cannot be enjoined from instituting criminal proceedings, against

concerns manufacturing and selling non-intoxicating beer on the ground that the attorney had transcended his authority by invoking the act against non-intoxicating liquors.

In *Harkrader v. Wadley*, 43 L. Ed. 399, text 406, the Supreme Court held as follows:

> "No case can be found where an injunction against a state officer has been upheld where it was conceded that such officer was proceeding under a valid state statute. In the present case the commonwealth attorney, in the prosecution of an indictment found under a law admittedly valid, represented the state of Virginia, and the injunctions were therefore in substance injunctions against the state. In proceeding by indictment to enforce a criminal statute the state can only act by officers or attorneys, and to enjoin the latter is to enjoin the state. As was said in Re Ayres, 123 U. S. 443, 497, 931; 216, 227: 'How else can the state be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the state itself is not subjected to the jurisdiction of the court as an actual and real defendant?'"

POINT II.

A and B

Section 56, Chapter 88, Laws of 1930 Does Not Contravene Any Provision of the Constitution of the United States. Under The Facts In

This Case Plaintiffs Are Not Engaged Exclusively In Interstate Commerce.

It is not contended by appellees that when Section 56, Chapter 88, Laws of 1930 is applied to persons engaged in intrastate business, said section is not unconstitutional. For a statement of fact as to the business conducted by appellees, I again call the court's attention to the finding of fact made by the court in its final decree beginning at page 44 of the record.

In *Coe v. Errol*, 116 U. S. 517, 29 L. Ed. 715, the Supreme Court held as follows:

> "When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination or have started on their ultimate passage to that state. Until then it is reasonable to regard them as not only within the state of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction and liable to taxation there, if not taxed by reason of their being without any discrimination, in the usual way and manner in which such property is taxed in the state."
>
> "That such goods do not cease to be part of the general mass of property in the state, subject as such, to its jurisdiction and to taxation in the usual way, until they have been shipped or enter-

ed with a common carrier for transportation to another state or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. It seems to us untenable to hold that a crop or a herd is exempt from taxation merely because it is, by its owner, intended for exportation. If such were the rule, in many states there would be nothing but lands and real estate to bear the taxes. Some of the western states produce very little, except wheat and corn, most of which is intended for export; and so of cotton in the southern states. Certainly, as long as these products are on the lands which produce them, they are part of the general property of the state. And so we think that they continue to be until they have entered upon their final journey for leaving the state and going into another state. It is true, it was said in the case of The Daniel Ball, 10 Wall. 565 (77 U. S. bk. 19, L. Ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.'

But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and certain. It may be sold or otherwise disposed of within the

state, and never put in course of transportation out of the state. Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the state, for the purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state its exportation is a matter altogether in fieri, and not at all a fixed and certain thing."

In *American Manufacturing Co. v City of St. Louis*, 250 U. S. 459, 63 L. Ed. 1084, it was held that a municipal license tax upon the conduct of a manufacturing business in the city is not an unconstitutional regulation of interstate commerce merely because the amount of the tax is measured by the amount of sales of goods manufactured in the local factory, whether sold within or without the State either in domestic or interstate commerce.

In the case of *Crescent Cotton Oil Co. vs. Mississippi*, 257 U. S. 129, 66 L. Ed. 166, it was held that the fact that a non-resident corporation operating a cotton seed oil mill in its home state and cotton gins in Mississippi ships out of the latter state for use in its oil mill all of the cotton seed which may be purchased in connection with its ginning operations does not make such operations an instrumentality of interstate commerce.

In *Diamond Match Co. vs. Village of Ontonagon*, 188 U. S. 81, 47 L. Ed. 394, the Supreme Court held that forest products in transit to a point outside the state may be given by the legislature a situs, for the purpose of taxation, at

the place nearest to the last boom or sorting gap of the stream in or bordering on the state in which such products naturally will be last floated during such transit.

In *Carson Petroleum Co. vs. Vial*, 279 U. S. 94, 73 L. Ed. 626, text 629, the Supreme Court held as follows:

> "In *Hughes Bros. Timber Co. vs. Minnesota*, 272 U. S. 469, 71 L. Ed. 359, 47 Sup. Ct. Rep. 170, pursuant to a contract of sale, logs cut were gathered on the Swamp river in Minnesota by the vendors and were floated by river to Lake Superior, there loaded onto the vendee's vessels and transported to their destination in Michigan. This Court said:
>
> > " 'The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner ultimately to send the logs out of the state does not put them in interstate commerce, nor does preparatory gathering, for that purpose, at a depot. It must appear that the movement for another state has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another state.' "

The beginning of the transit which conducts interstate commerce is the point of time that an article is committed to the carrier for transportation to the state of its destination or started on its ultimate passage.

McCluskey vs. Marysville, 61 L. Ed. 578;
General Oil Co. vs. Crane, 52 L. Ed. 754.

In the case of *Atlantic Coast L. R. Co. vs. Standard Oil Co.*, 72 L. Ed. 270 the Court held:

"The important controlling fact in the present controversy, and what characterizes the nature of the commerce involved, is that the plaintiff's whole plan is to arrange deliveries of all of its oil purchased on the seaboard of Florida so that they may all be there stored for convenient distribution in the state to the 123 bulk stations and to fuel oil plants in varying quantities according to the demand of the plaintiff's customers, and thence be distributed to subordinate centers and delivery stations, and this plan is being carried out daily. There is neither necessity nor purpose to send the oil through these seaboard storage stations to interior points by immediate continuity of transportation. The seaboard storage stations are the natural places for a change from interstate and foreign transportation to that which is intrastate and there is nothing in the history of the whole transaction which makes them otherwise, either in intent or in fact. There is nothing to indicate that the destination of the oil is arranged for or fixed in the minds of the sellers beyond the primary seaboard storages of the plaintiff company at Tampa, Port Tampa, Jacksonville, or the St. Johns river terminal. Everything that is done after the oil is deposited in the storage tanks at the Tampa destinations, or at the Jacksonville destinations is done in the distribution of the oil to serve the purposes of the plaintiff company that imported it. Neither the sellers who deliver the oil nor the railroad company that aids the delivery of the oil to the storage tanks and tank cars at the seaboard has anything to do with determining what the ultimate destination of the oil is, or has any interest in it, or any duty to discharge in respect to it, except that the rail-

road company, after the storage in Florida has been established for the purposes of the plaintiff company accepts the duty of transporting it in Florida to the places designated by the plaintiff company." * * * * * * * * * * *

"We have no hesitation in saying that the nature of the commerce in controversy in this case was intrastate.

"The case is like that of *General Oil Co. vs. Grain*, 209 U. S. 211, 52 L. Ed. 754, 28 Sup. Ct. Rep. 475, in which the General Oil Company sought an injunction against the collection of a tax for the inspection of certain of its oils in Tennessee, which it had brought into Tennessee and stored in tanks, and marked in storage tanks as oil already sold in Arkansas, Louisiana and Mississippi, and which remained in Tennessee only long enough to be properly distributed according to the orders therefor, and other oil in other tanks marked to be sold in those states but for which no orders at the time of shipment from the manufacturing plants had been received. The court held that the Tennessee tax was not a burden on interstate commerce as applied to oil coming from certain states though ultimately intended for sale and distribution in states other than Tennessee; that the oil was subject to a tax while it was being stored in Tennessee for convenience of distribution and for reshipping in tank cars and barrels; that this was business done in Tennessee, where the oil was brought to rest, and was for a purpose outside its mere transportation." * * * * * * *

"The argument is made that these are continuous streams of oil from Baton Rouge or Tampico into bulk stations in the interior of Florida

where it is sold to the customers of the plaintiff, and that its interstate character continues through that entire passage. It may be, as suggested in the argument, that oil is being discharged into plaintiff's receptacles for its storage at the same time that it is being discharged from the storage tanks into storage tank cars for its distribution, but that it is not at all inconsistent with its being a closing of an interstate or foreign transportation and a beginning of intrastate distribution for the purpose and business of the plaintiff."

In *Merchants Exchange vs. Missouri*, 248 U. S. 365, the Supreme Court held that the statute of Missouri providing that in cities having more than 75,000 inhabitants, buildings used for the storage of grain shall be deemed public warehouses, and prohibiting the issuance of weight certificates by other than authorized bonded state weighers, did not violate the Federal Constitution.

In *Hope Natural Gas Company vs. Hall*, 274 U. S. 284, the statute of West Virginia levied an occupation tax on persons engaged in producing for sale natural gas. The Hope Natural Gas Company was principally engaged in producing natural gas in West Virginia, and was transporting it directly from the well to another state and selling it. The Supreme Court held that the West Virginia statute did not violate the Federal Constitution.

In *Oliver Iron Mining Co. vs. Lord*, 262 U. S. 172, the statute of Minnesota levied a tax upon each person "engaged in the business of mining or producing iron ore or other ores." Plaintiff was engaged in mining the ore and

loading it immediately on cars and shipping it in interstate commerce. Plaintiff was engaged in interstate commerce, but the Court held that the tax was not unconstitutional because it did not apply until the coal was actually loaded on the cars.

It seems that these cases are based on the principle that the State may tax the commodity until such commodity is actually in interstate commerce. This is true even though plaintiff's business is an interstate commerce business.

In the Natural Gas Company and Oliver Iron Mining Company cases, supra, it appears that the plaintiffs bought the gas and coal before it was produced, and that they bought it for the purpose of selling it in interstate commerce, and did so sell it. However, the Court holds squarely that the mining of the coal and the production of the gas was not interstate commerce, and an occupation tax on the Gas Company and the Coal Company was legal.

The state of Pennsylvania enacted a staute levying a tax on the gross income of a railroad corporation engaged in interstate business. The tax applied to income received in interstate business, as well as to income derived from intrastate business. In the case of *Philadelphia and Reading Railroad Company vs. Commonwealth of Pennsylvania*, 82 U. S. 164, text 167, the Court held as follows:

> "No doubt every tax upon personal property or upon occupations, business or franchises, affects more or less the subjects and the operations of commerce. Yet it is not everything that af-

fects commerce that amounts to a regulation of it, within the meaning of the Constitution."

* * * * * * * * * * *

"Is, then, the tax imposed by the Act of February 23, 1866, a tax upon freight transported into or out of the State, or upon the owner of freight, for the right of this transporting it? Certainly it is not directly. Very manifestly it is a tax upon the Railroad Company, measured in amount by the extent of its business, or the degree to which its franchise is exercised. That its ultimate effect may be to increase the cost of transportation must be admitted. So it must be admitted that a tax upon any article of personal property, that may become a subject of commerce, or upon any instrument of commerce, affects commerce itself. If the tax be upon the instrument, such as a stage-coach, a railroad car, or a canal, or steamboat, its tendency is to increase the cost of transportation. Still it is not a tax upon transportation, or upon commerce, and it has never been seriously doubted that such a tax may be laid. A tax upon landlords as such affects rents, and generally increases them, but it would be a misnomer to call it a tax upon tenants. A tax upon the occupation of a physician or an attorney, measured by the income of his profession, or upon a banker, graduated according to the amount of his discounts or deposits, will hardly be claimed to be a tax on his patients, clients or customers, though the burden ultimately falls upon them. It is not their money which is taken by the government. The law exacts nothing from them. But when, as in the other case between these parties, a company is made an instrument by the laws to collect the tax from transporters, when the statute plainly contemplates

that the contribution is to come from them, it may properly be said they are the persons charged. Such is not the case. The tax is laid upon the gross receipts of the Company; laid upon a fund which has become the property of the company, mingled with its other property, and possibly expended in improvements or put out at interest. The statute does not look beyond the corporation to those who may have contributed to its treasury."

The State of Illinois enacted a statute regulating the storage of grain in warehouses. The warehouses contended that the statute was unconstitutional for the reason that Congress had enacted certain statutes to regulate warehouses.

In the case of *Munn vs. People of Illinois*, 94 U. S. 77, text 87, the Court held as follows:

"It was very properly said in the case of the State Tax on R. Gross Receipts, 15 Wall. 293 (82 U. S. XXI, 167), that 'It is not everything that affects commerce that amounts to a regulation of it, within the meaning of the Constitution.' The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly until Congress acts in ref-

erence to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a State, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

In the case of *Lemke vs. Farmers' Grain Company*, 258 U. S. 50, a statute of North Dakota had eleven different provisions in reference to grains purchased in that state. The provisions were as follows:

"Authority is given to a state inspector appointed by the governor,—

(a) To appoint a chief deputy inspector of grades, weights and measures; a chief elevator accountant; deputy inspector of grades, weights and measures; state deputy inspector of grades, weights and measures, and warehouse inspectors;

(b) To issue license to warehouses, buyers and solicitors of grain and other agricultural products;

(c) To establish uniform grades for grain, etc., for the state of North Dakota; to alter and modify such grades;

(d) To establish uniform grade certificates used in marketing the grain, etc.;

(e) To hear and determine appeals from state deputy inspectors and from deputy inspectors of grades, weights, and measures;

(f) To conduct investigations in regard to marketing, grading, and weighing of grain, etc.;

(i) To establish a reasonable margin to be paid producers of grain by warehouses, elevators and mills;

(j) To fix and determine all charges for grading, inspecting and weighing grain, etc.;

(k) To make rules, etc., to carry out the provisions of this act."

The facts in this case are very similar to the facts in the case at bar, except grain was handled in the former and cotton in the latter. The Supreme Court held that the North Dakota law was unconstitutional on the sole and only ground that it undertook to tax the selling price of grain purchased in North Dakota, even though such grain was sold in another state and in interstate commerce. Paragraph (i) of said act authorized the inspector "to establish a reasonable margin to be paid producers of grain by warehouse elevators and mills." The court in effect held that all of the other provisions of said statute were constitutional. The statute is copied in full in said opinion.

The court further held that it could not eliminate the unconstitutional provision of said statute and hold the balance of said act valid, and, therefore, held the whole act was unconstitutional. The court expressly held as follows, after stating its finding in this case:

"Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line

between state and Federal authority under the facts presented, which required a definition of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration."

In the case at bar it appears from the allegations in the original bill that the producers of the cotton shipped or hauled said cotton to Clarksdale for at least four specific purposes: First, for the purpose of storing it until it could be sold; second, for the purpose of getting it to a market; third, for the purpose of getting warehouse receipts in order that they might be bought and sold without the necessity of the actual delivery of the cotton; fourth, in order that it might be compressed in further preparation for marketing it. If the movement of the cotton had been stopped merely for the purpose of a change in the method of transportation, then the cotton may have been in interstate commerce. However, as held in cases herein cited, when a commodity is stopped for other purposes, then it is not in interstate commerce until it starts on its final journey.

So long as the cotton remained in the compress, it was under the direction and control of its owner and could be diverted from or started on its way in interstate commerce.

I think it clear that under the facts stated in the original bill, the cotton was not in interstate commerce until actually loaded on the cars out of the compress for shipment to its final destination, and that inasmuch as they applied prior to such time, the tax was legal and valid.

I, therefore, most respectfully submit that the decree of the lower court should be reversed and the perpetual injunction granted by said court should be dissolved.

Respectfully submitted,

GEO. T, MITCHELL,
Attorney General,

J. A. LAUDERDALE,
Assistant Atty. General,

Attorney For Appellants.

APPENDIX A—CHAPTER 88 LAWS 1930

SECTION 1. Be it enacted by the Legislature of the State of Mississippi, That this Act may be cited as the "Privilege Tax Law of 1930."

Definitions:

The term "person" and/or "company" herein used, interchangeably, when used in this chapter, shall be taken to include any individual, firm, partnership, joint adventure, association, corporation estate trust or any other group or combination acting as a unit and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

The term "population" when used in this chapter means the population as shown by the latest published census made by the United States; provided, that when any municipality makes and certifies an enumeration, as provided by law, it shall mean the population shown by such enumeration; except, that prior to the publication of the Fifteenth census of the United States, it shall mean the population generally reported and accepted as correct, and which may be verified by competent evidence.

The terms "year" and "annually" shall mean either the calendar year or a period of twelve calendar months.

The term "capacity" when used in this act with reference to manufacturing establishments shall mean and shall

be determined from the rated capacity of the machinery installed were the same operated on a ten hour schedule daily for the period mentioned.

The term "business" when used in this act shall include all activities or acts personal, professional, or corporate, engaged in or caused to be engaged in with the object of gain, profit, benefit, or advantage, either direct or indirect, or following and/or engaging in any trade, calling or profession, and all things which occupy the time, attention and labor of men for the purpose of a livelihood or profit.

The term "place of business" when used in this act means a store, shop, counting room, office, factory, or other location or locations, whether in a building, enclosed space, or in any undefined place or places where any business as herein defined is done, conducted or carried on.

The term "state license" when used in this act means a privilege license issued by the officer whose duty it is to collect the tax, usable, good and valid in the county named in the license, and it shall be the authority of the licensee to engage in the business designated therein, for the period of time and under the conditions and at the place stated.

The term "state-wide license" when used in this act means a license issued by the State Tax Commission, Commissioner of Insurance, or other officer required to collect the tax, usable, good and valid in each and every county in the state, and shall be the authority of the licensee to engage in the business designated for the period of time, un-

der the conditions specified therein, throughout the entire state.

The term "officer" and/or "collector," when used in this act with reference to officers whose duty it is to collect privilege taxes, means and shall include every officer of the State of Mississippi whose duty it is to collect privilege taxes as by law provided.

The word "taxpayer" when used in this act means any person liable for any tax hereunder, in addition to the usual meaning of such word.

All such licenses, whether state licenses or state-wide licenses, shall be good, usable and valid for one year from the date thereof, unless a more limited period is shown, but no license shall be issued for a longer period than one year.

SEC. 56. COTTON BUYERS—Every person engaged in the business of buying and selling cotton for himself shall pay a privilege tax of one hundred ($100.00) dollars; but, where a cotton buyer only buys cotton from one gin in only one county or buys from the producers in only one municipality, said privilege tax is twenty-five ($25) dollars; the license must be issued in his name, and may be paid on or before the first day of September for a full year; only the municipality of his residence can collect a municipal privilege tax of him. Every individual, firm, partnership or corporation engaged in the business of buying or selling cotton shall take out in his or their name a state privilege tax of twenty-five ($25.00) dollars for every employee engaged in their business as buyer or seller, on or before

the first day of September; such privilege tax shall authorize the buying or selling cotton by its bearer; and it shall be unlawful for any employee to buy or sell cotton without a privilege tax in his possession, issued in the name of his employer. Such license cannot be issued for less than a year.

If the individual, firm, partnership, or corporation take out a municipal privilege in his or their name for the municipality of the residence of their employee and take out also, the state privilege tax imposed on them above, such employee shall have the authority to buy or sell cotton in any other municipality of the state, without paying any further state or municipal privilege tax.

But the above privilege taxes shall not be required of any landlord or other person who receives cotton in payment of accounts due him, nor of any merchant who pays a privilege tax on a store and who purchases only from the producer at the place of business of such merchant, nor to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes.

IF Part of Act Invalid, Not to Affect Entire Act.

SEC. 244. That if for any reason any section, paragraph, provision, clause, or part of this chapter shall be held unconstitutional or invalid, that fact shall not affect or destroy any other section, paragraph, provision, clause, or part of this chapter not in and of itself invalid, but the remaining portion hereof shall be in force without regard to that so invalidated.